

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

HUDSON SAVINGS BANK,	)
	)
Plaintiff,	)
	)
v.	)
	Civil No. 05-11604-GAO
	)
GEORGE C. AUSTIN, III, AS	)
EXECUTOR OF THE ESTATE OF GEORGE	)
CLIFFORD AUSTIN, JR., A/K/A	)
G. CLIFFORD AUSTIN, II, GEORGE	)
C. AUSTIN, III, AS HEIR OF	)
GEORGE CLIFFORD AUSTIN, JR.,	)
A/K/A G. CLIFFORD AUSTIN, II,	)
THE UNITED STATES OF AMERICA,	)
and MASSACHUSETTS DEPARTMENT	)
OF REVENUE,	)
	)
Defendants.	)

PARTIES' LOCAL RULE 16.1 JOINT STATEMENT<sup>1</sup>

On or about August 1, 2005, the United States removed this interpleader action from the Middlesex County Superior Court. The Commonwealth of Massachusetts Department of Revenue filed a motion to dismiss the instant proceeding on August 9, 2005. On August 19, 2005, the United States filed a request to extend its time to respond to the Commonwealth's motion until such time as the First Circuit Court of Appeals issued a ruling or other order in GMAC v. United States, et al., Case No. 05-1859, which is the United States' appeal of the

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<sup>1</sup> Counsel for the Commonwealth of Massachusetts was not asked to sign this joint statement given the Commonwealth's position that it has not waived its sovereign immunity and thus is not subject to the jurisdiction of this Court and any participation in such a joint statement might constitute a waiver of this immunity.

Counsel for the plaintiff will likely file a motion to deposit the funds with the Court and withdraw from this matter.

determinations made by this Court in GMAC v. Bayko, et al., Case No. 04-12448-GAO. The issues presented by the Commonwealth of Massachusetts in its motion to dismiss the instant proceeding are the same issues as those decided by this Court in GMAC, and thus are the same issues as those currently pending before the First Circuit.

As a result, it does not seem appropriate to submit a proposed discovery plan and dispositive motion schedule until after the Commonwealth's motion to dismiss this proceeding is fully briefed and decided, and it would be a waste of the parties', and more importantly the Court's, time and resources for the issue to be fully briefed and argued by the parties until the GMAC appeal is adjudicated. If the GMAC appeal does not fully resolve the issues pending before this Court, then the United States will file its opposition to the Commonwealth's motion and the Court can then decide the matter on the merits.<sup>2</sup> If the motion is granted and the proceeding is dismissed, discovery in this matter is moot. If the motion is denied, then the parties will submit either a proposed stipulation or a proposed discovery schedule which would

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<sup>2</sup> We are mindful of the possibility that the First Circuit will, once again, be unable to effectively adjudicate these issues in the GMAC appeal. The plaintiff in the GMAC case paid the Commonwealth of Massachusetts the amount it was seeking from the surplus fund after the entry of dismissal. Thereafter, based on that occurrence, the United States filed a motion to dismiss the appeal on mootness grounds and further sought a remand of the case to vacate the judgment and determine the interests of the remaining parties. The Commonwealth has opposed the motion to dismiss the appeal but that opposition relates only to the United States' request that the judgment be vacated. As a result, it is unlikely that the appeal will be resolved on the merits.

allow for a short time to default those defendants who have not yet answered and determine the proper lien priority of the remaining defendants.

RESPECTFULLY SUBMITTED,

Plaintiff  
Hudson Savings Bank:

By:

Daniel Burger (by email consent)

Daniel J. Burger, Esq.  
Law Office of Joseph J. Connolly  
74 Main Street  
Marlborough, MA 01752  
(508) 485-4488

Defendant  
United States:

By:

/s/ Lydia Bottome Turanchik

Lydia Bottome Turanchik, Esq.  
U.S. Dept. of Justice, Tax Division  
Post Office Box 55  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 307-6560